IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 4TH JUNE 2007 / 14TH JYAISHTA 1929

WP(C).No. 16575 of 2007(W)

AGAINST THE ORDER IN EP. 631 /2004 IN
OS.231/1994 of II ADDL.SUB COURT,THRISSUR

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PETITIONER:

SOMASUNDARAM, S/O.KOCHUNNI NAIR,
SUPRABHA, VELIYANOOR, TRICHUR.

BY ADV. SRI.V.V.ASOKAN
SMT.S.AMINA

RESPONDENTS:

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1. HMT LTD., LAMPS DIVISION,
HMT POST, BALANAGAR, HYDERABAD.

2. M/S.PRAKASH STORES, PRAKASH BUILDERS,
HIGH ROAD, TRICHUR-1, REPRESENTED BY ITS
PARTNER-M.JAYAPRAKASH.

3. M.JAYAPRAKASH, S/O.KOCHUNNI NAIR,
PARTNER OF M/S.PRAKASH STORES,
TRICHUR-1.

4. SREEKUMAR, S/O.KOCHUNNI NAIR,
PARTNER OF M/S.PRAKASH STORES, TRICHUR-1.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

WP(C)No.16575 OF 2007 W

Dated this the 4th June, 2007.

JUDGMENT

This writ petition is filed seeking to quash Ext.P6 order. The writ petitioner moved Ext.P5 application for the production of a document to show that he had retired from the partnership firm but it is stated in Ext.P5 that the said document is sought to be produced to show that he is not at all liable for any of the decree amount. Learned counsel for the writ petitioner has made available copy of the decree. Rightly or wrongly the decree casts liability on this writ petitioner as well. So, the question whether the judgment debtor is liable or not cannot detain us longer and there cannot be an adjudication of the same under Section 47 of the Civil Procedure Code. At the same time, learned counsel for the writ petitioner had taken me to the order of the Court in Ext.P3 wherein the Court has stated that he was an active partner and was deriving a monthly income of Rs.20,000/- and therefore he has got the means to pay and he should pay the amount. So, in order to establish that factor he may have to rely on some document to prove that he ceases to be a partner from a particular date. It is a relevant document for the purpose of proving his means especially when the trial court has opined so in

Ext.P3 order. Though I do not find any infirmity in Ext.P6 order on account of the fact that the full facts are not revealed in the affidavit, I feel the writ petitioner should be given an opportunity to file an appropriate application showing the real reason for production of document and the executing court is directed to dispose of the said application after hearing the other side. Therefore, the order under challenge is set aside and the writ petitioner is directed to file a fresh petition showing the real reason for the summoning of the document. Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge

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